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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the second periodic report of Montenegro

Addendum

Information received from Montenegro on follow-up to the concluding observations*

[Date received: 15 July 2015]

1. The Committee against Torture considered the second periodic report of Montenegro (CAT/C/MNE/2) at its 1224th and 1227th meetings, held on 7 and 8 May 2014 (see CAT/C/SR.1224 and CAT/C/SR.1227), which was defended by a working group led by the Director General of the Directorate for Execution of Criminal Sanctions, Ms. Slavica Rabrenović, and adopted the following concluding observations at its 1239th meeting, held on 16 May 2014 (see CAT/C/SR.1239), related to fundamental legal principles, impunity for war crimes and legal remedy for victims and investigations. Having collected the answers by the competent institutions, we are submitting the following information as answers to the Committee recommendations.

Fundamental legal safeguards: follow-up information relating to paragraph 7 of the concluding observations (CAT/C/MNE/CO/2)

2. According to Article 5 of the Criminal Procedure Code, persons deprived of liberty by a competent state authority shall be immediately informed in their language or in a language they understand about the grounds for deprivation of liberty and shall, at the same time, be informed that they are not obliged to make any statement, that they have a right to a defence counsel of their own choice and to request that information on their deprivation of liberty is communicated to a person of their choosing as well as to a diplomatic consular representative of a State whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees. Article 266 of the same Code stipulates:

- The public prosecutor shall immediately advise a person deprived of liberty on his/her right to retain a defence counsel, and enable him/her to inform the defence counsel of his/her deprivation of liberty by phone or via other means of

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electronic communication, either directly or through his/her family members or a third party whose identity must be disclosed to the public prosecutor, and shall assist him/her in finding a defence counsel if necessary

- If the person referred to in paragraph 1 of this Article fails to ensure the presence of a defence counsel within 12 hours from the moment this was made available to him/her within the meaning of paragraph 1 of this Article, or if he/she declares waiver of the right to defence counsel, the public prosecutor shall hear him/her without delay, and at the latest within the next 12 hours
- If in a case of mandatory defence referred to in Article 69, paragraph 1, of this Code the person referred to in paragraph 1 of this Article fails to retain a defence counsel within 12 hours from the moment he/she was instructed on that right, or declares the waiver of retaining a defence counsel, he/she shall be appointed a defence counsel ex officio and shall be heard without delay
- The public prosecutor shall release the person referred to in paragraph 1 of this Article immediately after the hearing save when the public prosecutor assesses there are reasons for the person's detention.

3. The right to access to a physician is regulated by Article 268, paragraph 6, which reads:

> Where a person deprived of liberty is brought to the public prosecutor, that person, his/her defence counsel, family member, or a common law spouse may request the public prosecutor to order a medical examination. The decision on appointing a medical doctor who will perform the medical checks and the record on the detainee's hearing shall be attached to criminal case file by the public prosecutor.

4. When it comes to notifying the relatives of deprivation of liberty, Article 180 of the Criminal Procedure Code prescribes that immediately after a person has been deprived of liberty and within a term of 24 hours at the latest, police authority, the public prosecutor or the court shall inform the family of the persons deprived of liberty or their common law spouse thereon, unless the persons deprived of liberty expressly object thereto. Draft Code on Amendments to the Criminal Procedure Code provides for the deletion of the term of 24 hours so that the competent authorities shall communicate the fact of deprivation of liberty to relatives immediately.

5. In practice, public prosecutors respect and implement Article 5 of the Criminal Procedure Code (CPC) guaranteeing the right of persons deprived of liberty to be immediately informed in their language or in a language they understand that, inter alia, they have a right to a defence counsel of their own choice and that information on their deprivation of liberty be communicated to a person of their choosing as well as to a diplomatic consular representative of a State whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees. In practice, public prosecutors respect these rights of persons deprived of liberty and familiarize these persons with their rights during the first contact with the public prosecutors, i.e. during their apprehension to the public prosecutors. They are also enabled to retain a defence counsel of their own choosing and persons of their choosing are informed of their deprivation of liberty.

6. Article 268, paragraph 6, of the CPC stipulates that where a person deprived of liberty is brought to the public prosecutor, that person, his/her defence counsel, family member, or a common-law spouse may request the public prosecutor to order a medical examination. The decision on appointing a medical doctor who will perform the medical checks and the record on the detainee's hearing shall be attached to the criminal case file by the public prosecutor. The Code does not provide that the medical examination is

conducted by a medical doctor chosen by the person deprived of liberty. In practice, medical examination is most often entrusted to witness experts of the medical profession.

Impunity for war crimes and remedy for victims: follow-up information relating to paragraph 13 of the concluding observations

7. When it comes to cases that are prosecuted in Montenegrin courts in relation to crimes against humanity and other goods protected by international law (war crimes), they are subject to provisions of domestic criminal law with full compliance for the relevant international legal standards. The decisions of Montenegrin courts in war crimes cases are in accordance with humanitarian law, including the jurisprudence of the International Tribunal for the Former Yugoslavia, with the positions and jurisprudence of the International Tribunal for the Former Yugoslavia used in cases and decisions made in cases prosecuted and led before the Specialized Division for Organized Crime, Corruption, Terrorism and War Crimes, in Podgorica.

8. As regards the comment on the recommendations of the Committee against Torture in connection with the punishment of the perpetrators with appropriate sanctions, the purpose of punishment is prescribed under Article 32 of the Criminal Code, while Article 42 of the Criminal Code lays down the general rules on sentencing. In order to achieve the purpose of punishment stipulated in Article 32 of the Criminal Code, the court separately for all the defendants established all the circumstances that could have an impact on the type and length of sentence, all of which is stated in the final verdict in the *Morinj* case.

9. When determining the type and length of sentence, the court took into consideration all the circumstances which influence the length of sentence, and particularly the degree of violation of the protected good, through the grounds stipulated by Article 42 of the Criminal Code. The consequences of an act, in the same form, may reflect in a greater or lesser degree of injury or endangerment without changing the qualification of the act, and this circumstance may be assessed only in sentencing.

10. What is important with regard to the above point is that the actions of which the defendants were charged under the indictment, which were established by the judgment and which represent the actions of committing the criminal offence of war crime, are otherwise, in theory and practice, of such quality that they represent a necessary minimum that is needed to determine the existence of the criminal offence of which the defendants were found guilty. Therefore, keeping that in mind, it is clear that this element could not have been considered an aggravating factor in sentencing. This constituted the grounds to, taking into account all the mitigating circumstances on the other side, impose a sentence below the statutory minimum on the defendants, where the Court in sentencing took into account the number of persons against whom each of the defendants perpetrated criminal activity, and particularly the nature of committed criminal offences of which the defendants were found guilty.

11. Victims of war crimes and their immediate family members are entitled to demand compensation in accordance with Article 207 and 208 of the Law on Obligations.

12. In 2014, 152 cases of deciding on compensation of damages to civilian victims of war crimes were processed before the Montenegrin courts. 37 cases have been resolved. In 34 cases, the claim has been adopted and damages totalling EUR 420,710.45 have been awarded. In one case, the claim was declined while in two other cases, plaintiffs withdrew the claim.

13. On 25 February 2015, 116 cases were still pending, all of which before the Basic Court in Podgorica.

Investigations: follow-up information relating to paragraph 14 of the concluding observations

14. In the process of reforms implemented, the Police Administration makes a significant contribution to the prevention of torture and inhuman treatment, especially when it comes to meeting international obligations in the promotion and protection of human rights and implementation of standards in individual areas, the implementation of the Conventions, regular reporting and monitoring of the implementation of recommendations, as well as communicating information on the progress made.

15. In accordance with the conclusions and recommendations of the Committee against Torture in relation to the report submitted by Montenegro as a contracting party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 7, 13 and 14) and the concluding observations (CAT/C/SR.1239), the Police Administration has, within its jurisdiction, stepped up its activities and taken comprehensive steps and measures for their implementation (the fundamental legal protection of persons deprived of their liberty/retained; prompt, impartial and effective investigation).

16. In the performance of police tasks and duties, the police officers adhere to standards of police conduct. Respect for human rights, and combating irregularities and opposition to any illegal, degrading and unprofessional behaviour, are priorities in the work and training of police officers.

17. In deprivation of liberty, the police act in accordance with Article 264 of the Criminal Procedure Code (*Official Gazette of Montenegro* 57/09, 49/10, 47/14 and 2/15) and immediately notifies the public prosecutor of the person's deprivation of liberty, draws up an official annotation that contains the time and the place of the deprivation of liberty and brings the person before the Public Prosecutor without delay, no later than 24 hours from the deprivation of liberty, or releases the person immediately. If the public prosecutor finds that a statutory reason for detention exists, the public prosecutor may hold the person deprived of liberty, at the longest for 48 hours from the moment of his/her deprivation of liberty. The time of detention shall count from the moment when the public prosecutor is informed of the deprivation of liberty. Authorized police officers may deprive of liberty a person for whom an international wanted notice has been issued. The person deprived of liberty is brought to the investigative judge without delay, within 24 hours from the moment of deprivation of liberty.

18. In relation to this recommendation, officers of the Police Administration comply with the provisions of the Criminal Procedure Code and the Constitution, according to which the persons deprived of liberty are immediately informed about the reasons for deprivation of liberty in their own language or in a language they understand, and so is the third party designated by them. In the coming period, all organizational units of the police will keep records of time of notification of a third party.

19. The Police Administration acts in line with Article 261, paragraph 4, of the Criminal Procedure Code in cases when a person is deprived of liberty, i.e. in accordance with paragraph 5 of this Article the police may, as an exception and upon the approval by the public prosecutor and with consent of the suspect and in the presence of the defence counsel, hear the suspect. If the suspect fails to retain a defence counsel, the competent public prosecutor shall appoint him/her a defence counsel from the Bar Association's list ex officio, and shall hear him/her without delay.

20. In applying police powers, at a request of the person against whom the powers are applied, the police officer shall enable the provision of medical assistance to the person by a health care institution, in accordance with Article 25 of the Law on Internal Affairs.

21. In order to achieve the legality of the proceedings against persons held, a special form, No. 1 and 2 was developed and distributed (Records of holding persons deprived of liberty). The form contains information about all aspects of holding a person, i.e. admission of the person by on-duty service, placement in holding premises, confiscation of personal belongings, providing meals, information on possible medical assistance, information on the appeal against the decision on holding, information on possible injuries observed during the transfer of the person, as well as a part of the records relating to the surrender of the person held to the competent authorities for further action (Office for Enforcement of Sanctions, the competent courts, other internal affairs bodies). This form is the basis of dossiers for each person held. The dossier contains a decision on holding pursuant to the Criminal Procedure Code, the records on the breath analysis of persons (if the person is tested for alcohol), findings by a physician (if the person was examined), a copy of any appeals by person held against the decision on holding and the decision on termination of holding.

22. When held, the persons receive a so-called "Information sheet for the person held" in their own language or in a language they understand, which indicates all of their rights (to a defence counsel, physician, etc.).

23. Under the terms provided in the Law on Free Legal Assistance, the information sheet has been amended with regard to the right of persons to free legal assistance. The information sheet has been translated into English, Russian, German, Italian, Albanian and Romani.

24. Using video surveillance enabled monitoring of persons held and the possibility of electronic recording, archiving, retrieval and exploitation of stored video.

25. A media campaign has reaffirmed the role of the phone when it comes to the petitions and complaints of citizens on police procedures with special emphasis that every citizen has the right to object if he/she considers that he/she is illegally deprived of liberty (phone number 19820 and 19821).

26. Special attention in the work of the Police Administration has been paid to the legality and transparency, respect for human rights and freedoms, respect for the Code of Ethics, strengthening the integrity of officers, the application of legal standards and work methodology of the police organizations of the European Union countries.

27. Control of the police work is provided through parliamentary, civic and internal control.

28. Parliamentary control of police work is performed by the Parliament of Montenegro, through competent body — Security and Defence Committee – which controls the work of the National Security Agency as well.

29. Civic control of police work is conducted by the Council for Civic Control of the Police Work. The Council is the body that assesses the use of police powers to protect human rights and freedoms. It can be addressed by the citizens and police officers and consists of five members, of whom one appointed respectively by the Bar Association of Montenegro, Physicians Association of Montenegro, Association of Lawyers of Montenegro, University of Montenegro and non-governmental organizations dealing with human rights. The Council provides assessment and recommendations that are submitted to the Minister of Interior, who is obliged to inform the Council about the measures taken.

30. Internal control of police work is conducted by a separate organizational unit of the Ministry with the task to carry out control of legality of performing police duties, especially in regard to respect and protection of human rights when executing police tasks and use of police powers; conduct of proceedings of counterintelligence protection and other controls important for efficient and lawful work of the police.

31. The Division for Internal Control of the Police Work does not play only a repressive role in sanctioning police officers committing offenses, but is also implementing measures of a preventive character in the form of regular inspection of the work of organizational units of the Police Administration, controlling the legality of use of police powers, monitoring and analyzing the issue of the frequency of complaints about the work of police officers — acting instructively and pointing to issues which accompanies the work and conduct of police officers.

32. After the completed control, in case of reasonable suspicion that in the application of police powers a criminal offence was committed that is prosecuted ex officio, the Division for Internal Control of the Police Work files a report or a criminal complaint to the competent public prosecutor's office having material and territorial jurisdiction. In cases where after investigation it is found that the use of police powers in the actions of the police officers involved a breach of official duties, activities are undertaken in order to initiate a procedure for determining disciplinary liability of the police officer.

33. In addition to the Division for Internal Control of the Police Work, the Rulebook on internal organization and jobs classification of the Ministry of Interior stipulates the obligation of management staff in the Police Administration to monitor and implement hierarchical control over the work of organizational units they manage.

34. Finally, the most important control over the work of the Police Administration is a daily control by citizens through direct insight into the conduct and results achieved by the police.

The cases in which the citizens complained about the excess use of power in applying means of coercion, with suspected torture in 2014

35. In 2014, the Division for Internal Control of the Police Work conducted verification of legality of actions of police officers in 156 cases.

36. Of this number, in 10 cases verifications related to complaints by citizens that could, content-wise, be treated as the cases of reporting a form of abuse.

37. In three cases, the complainants complained about the conduct of police officers outside the official premises, while in 7 cases the complaints related to the conduct of police officers in official premises.

38. The verifications conducted established that in:

- 6 cases there were elements for the merits of allegations and
- 4 cases no facts and circumstances could be established that would indicate the existence of elements of disciplinary or other liability.

39. However, in three of those cases in which it was determined that the complaints were unfounded, because the claims of complainants could not have been indisputably established in the process of internal control, and given that the complaints at issue contained serious allegations due to which they could be treated as criminal charges, the files made in the process of internal control have been submitted to the competent public prosecutor's offices for a final decision.

40. In cases in which the Division found the allegations from complaints or controls to be founded, the following measures have been taken:

- In five cases, the Division for Internal Control of the Police Work submitted the disciplinary prosecutor of the Police Administration with the motions to initiate disciplinary proceedings against 10 police officers, submitting the files made in the process of internal control in these cases to the competent public prosecutor's offices

for the final assessment of the existence of elements of criminal offences that are prosecuted ex officio

- In one case, it was noted that the immediate superior of the organizational unit to which the police officer is assigned has already taken measures — initiated disciplinary proceedings and submitted documents to the competent prosecutor for further action.

41. In the first quarter of 2015, the Division for Internal Control of Police Work conducted the verification of legality of actions of police officers in 20 cases.

42. In the reporting period, there were no cases in which the verifications related to the complaints by citizens that could, content-wise, be treated as the cases of reporting a form of abuse (torture, inhuman or degrading treatment or punishment).

43. Implementation of the assumed commitments — recommendations to improve the treatment of persons deprived of their liberty, improving the conditions in which these persons are held, providing the criminal prosecution of perpetrators of torture and abuse will be one of the major priorities in the work and a renewal of the commitment of the Police Administration to the promotion and protection of human rights and freedoms.

44. Public prosecutors always take effective and impartial investigation when they come to knowledge that there is a suspicion of torture, abuse and excessive use of force by the police against suspects.